IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22495 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARASWATI EDUCATION & CHARITABLE TRUST, - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
MS MANISHA LAVKUMAR, AGP for Respondent(s) : 1,
MR AR THACKER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/11/2006

ORAL JUDGMENT

Rule. Learned AGP Ms.Manisha Lavkumar waives service of rule on behalf of respondent No.1 and learned advocate Shri Thacker waives service of rule

on behalf of respondent No.2. Considering the urgency in the matter, at the request of the learned advocates appearing for the parties, the petition is taken up for final hearing forthwith.

2. The petitioner is a trust seeking to start a college imparting education in B.P.Ed. course. For starting such an institution, the petitioner required necessary permission from the National Council for Teachers Education (NCTE for short) as well as from the State Government and also affiliation from respondent No.2 University. The petitioner started the process by first applying to the NCTE for granting necessary recognition. Initially, such recognition was granted, but the same was conditional. Eventually, by an order dated 15th September 2006, NCTE unconditionally granted recognition in favour of the petitioner. Armed with this unconditional recognition, the petitioner pursued its application before the State Government and the University. The State Government granted approval on 13th October, 2006. With passing of the said order, it is not in dispute that the petitioner

received all necessary administrative approvals from the authorities. To a query raised by this Court, learned advocate Shri Thacker appearing for respondent No.2 University clarified that upon the Government passing the order on 13.10.2006, there was no further formality to be completed in favour of the petitioner in allotment of students for its B.P.Ed Course. The main objection of respondent No.2 University, however, is that the approval of the Government was granted at a belated stage and that considering the requirement of minimum number of days of academic activities, which according to the relevant rules is 180 days in a year, at this stage, it would not be possible to allot students for admitting them in the college of the petitioner institution.

3. To examine this stand of respondent No.2, a few a facts need to be noted. It is not in dispute that through a Common Admission Committee constituted by respondent No.2 University, admission were granted to various B.P.Ed. colleges on 12th and 13th October, 2006. Upon receipt of the order passed by

Government on 13th October,2006, the petitioner moved this Court on first available opportunity on 17th October 2006. Since then, this Court has taken cognizance of the matter issuing notice on the respondents. Even with respect to the students who have been admitted by various colleges pursuant to allotment made by Common Admission Committee of respondent No.2 University, no academic activities have been carried out since all educational institutions proceeded for Diwali vacation with effect from 14.10.2006. It is not in dispute that educational institutions would reopen academic activities from 6th November 2006 upon completion of Diwali vacation.

4. The petitioner had applied for recognition to NCTE well in time. Initially recognition was granted but the same was conditional. When the petitioner approached this Court for allotment of students by filing Special Civil Application No.19539 of 2006, the petitioner had received only provisional recognition and this Court therefore initially did not grant the prayers made by the petitioner. The

Court, however, observed that if the petitioner receives unconditional recognition and approaches the Authorities, the Authorities will take appropriate steps in this regard bearing in mind the observations made by this Court.

5. Pursuant to the said order dated 13th September,2006, the petitioner approached the authorities placing on record the order passed by the NCTE on 15th September,2006 granting unconditional affiliation. The State Government thereafter consumed some more time in granting approval to the petitioner. In fact, once the NCTE granted recognition, the State Government had limited role to play as has been held by the Hon'ble Supreme Court in the case of State of Maharashtra v. Sant D.S.S.Mahavidyalay, 2006 AIR SCW 2048. Be that as it may, the petitioner finally received all necessary permission and approvals at least by 13th October, 2006. The petitioner should have, therefore, been included in the process of allotment of students for admitting them in the B.P.Ed. course. At that time, the Committee set up by the University was

functional and admission process was still going on.

6. Learned advocate Ms.Mamta Vyas for the petitioner stated and the statement was not seriously disputed that large number of students who were in the waiting list are still awaiting admissions.

6.1 A Division Bench of this Court also in a decision dated 30.11.2005 in LPA No.1571 of 2005 expressed desire that such infrastructure which is set up should not be allowed to go waste for one full year.

7. Considering all these aspects of the matter, I find that the prayers made by the petitioner deserve to be granted.

8. As noted earlier, the main objection of respondent No.2 University is that at this belated stage, the question of requirement of minimum of 180 days of academic activities in a year would stare on the fact of the petitioner. Additionally, it is also contended that the Committee was set up by the

University only for a specific purpose and that Committee has discharged its duties and submitted report and thus, the Committee stands dissolved. It is also submitted that any direction that this Court may give for granting admissions at this stage would take a considerable time to implement.

9. All the above objections of the University need to be overruled. Firstly, as noted earlier, students who have been granted admission by the Admission Committee have not undertaken a single days academic session. They would start their formal education only with effect from 6.11.2006. With respect to the present petitioner institution, therefore, there is no significant difference in the number of days available. In that view of the matter, it is difficult to appreciate the stand of respondent No.2 University that if admissions are granted now, the students may not be able to complete the minimum number of academic days. The University through its Committee itself had granted admission till 13.10.2006 i.e. on the stroke of Diwali vacation. Diwali vacation will conclude only on

6.11.2006 for the academic institutions in Saurashtra region. No significant difference, therefore, can be discerned vis-a-vis the petitioner institution and other institutions which have granted admission so far.

9.1 The question of Committee being dissolved would not deter this Court from giving directions in the interest of justice. The Committee is, after all, a creation of the University and can always be reactivated and I see no impediment in directing the University to do so.

10. The stand that carrying out the directions of this Court would consume further time also does not appeal to the Court. Respondent No.2 University can very well issue advertisement in newspapers calling upon the students who are awaiting such admissions and grant admissions to such students according to their inter-se merit. The petitioner has shown its willingness to bear the cost of such advertisement.

11. Considering all these aspects of the matter, the petition is disposed of by giving following directions.

(1) Respondent No.2 University shall give a public advertisement in one English and one Gujarati newspaper having wide circulation in Saurashtra region on 3.11.2006 calling upon the interested qualified students from the list already prepared by the Admission Committee to seek admission in the petitioner-institution, if they so desire.

(2) The Committee earlier formed by the University shall undertake the exercise of processing the requests of such students on 5.11.2006. The said date shall be indicated in the advertisement to be published as mentioned above.

(3) Up to a maximum intake of the petitioner-institution, sufficient number of students will be allotted by the Committee.

(4) The above directions are given on the

condition that the petitioner shall immediately grant admission to such students and commence the academic session forthwith.

(5) The petitioner shall deposit an amount of Rs.40,000 (Rupees forty thousand only) with respondent No.2 University towards the cost of publication of advertisement. The amount shall be deposited by 2.11.2006. Simultaneously, the petitioner shall file an undertaking before this Court by the same date to the effect that the petitioner shall deposit with respondent No.2 the differential amount of cost of advertisement if ultimately so found necessary.

12. With the above directions, the petition is disposed of. Since respondent No.2 is compelled to reassemble the Admission Committee at this stage, the petitioner shall bear cost of Rs.10,000/- for the same purpose to be paid to respondent No.2. Rule is made absolute accordingly.

Direct service.

(Akil Kureshi, J.)

(vjn)